

## REMARKS/ARGUMENTS

### 35 USC §102 (b)

Reconsideration and allowance are requested of Claims 5, 7, and 10-12 which the Examiner has rejected as being anticipated by Rogers under 35 USC § 102(b).

Allowance is requested of New Claim 14. Please cancel Claim 13. MPEP § 706.02(b) states that a 35 USC § 102(b) rejection can be overcome by persuasively arguing that the claims are patently distinguishable from the prior art reference, and/or by amending the claims to patently distinguish over the prior art.

Invalidity for anticipation requires that all of the elements and limitations of the claim are found within a single prior art reference. Carella v. Starlight Archery and Pro Line Co., 804 F.2d 135, 138, 231 USPQ 644, 646 (Fed.Cir.1986). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576 (C.A. Fed. 1991).

Applicant respectfully submits that Claims 5 and 11 are distinguishable from Rogers. Applicant's Amended Claim 5 claims removing finished product from the mill stream "from each separation step" wherein "at least one separation step occurs directly after each breaking step." Applicant's Amended Claim 11 claims removing finished product from the mill stream "from each separation step" wherein "the first separation step occurs directly after degermination." This process reduces redundancy and allows for increased production efficiency using fewer machines.

The limitations of Applicant's Claims 5 and 11 are distinguished from Rogers because Rogers discloses two consecutive "break" steps ("Pre Break" and "First Break") with no separation or removal of finished product between them. (Rogers' "Pre Break" stage is described in Col. 3, line 65 through Col. 4 line 8.) Rogers does not separate and remove finished product after each breaking step and is therefore less efficient than Applicant's claimed invention. After Rogers' "Pre Break" step, there is some grain that could be sifted out as finished product; however, instead of removing finished product after the "Pre Break" step, Rogers discloses directing the stream on to an additional breaking step.

Applicant's Claims 5 and 11 allow grain to be sifted and removed from the mill stream directly after the first break step (degermination). By extracting finished product as soon as possible, efficiency is increased because further sifting of an already isolated stream is not required. This results in a dramatic decrease in handling and a reduction or elimination of flow across subsequent process steps. This also increases the through-put of product allowing for the processing of an increased volume of grain because finished product is removed from the mill stream as early as possible, allowing more room in the stream for unfinished product.

Applicant's Claims 5 and 11 allow greater control of the finished product by allowing desired size classes to be removed from the mill stream after each breaking and subsequent separation step. For example, flour (which is a small grain particle) is not always the desired end product, however, when a mill stream has two breaking steps in a row (such as in Rogers) without removal of product between them, more

flour will be produced. When larger particles are desired, such as grits, Applicant's claimed invention allows the control and removal of such larger products without forcing them through subsequent breaking steps which would break some of the desired larger particles into smaller particles.

### 35 USC § 103(a)

Reconsideration and allowance are requested of Claim 10 which the Examiner has rejected under 35 USC § 103(a) as being obvious over Rogers in view of Giguere. Applicant submits that the amendments made to Claim 5 make Applicant's Claim 10 not obvious over Rogers in view of Giguere. A *prima facie* case of obviousness requires (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. In re Sang-Su Lee, 277 F.3rd 1338, 61 USPQ 2d 1430 (Fed. Cir. 2002) (and cases cited therein). Applicant respectfully submits that a *prima facie* case has not been established.

Applicant respectfully submits that Claim 10 is dependant on Claim 5, and is therefore not-obvious for the reasons asserted above because not all of the claim limitations have been met.

### Information Disclosure Statement

Applicant has become aware of several additional references that deal with the general subject matter of grain milling. The additional references have come to Applicant's attention because of a co-pending European patent application that is

similar to this U.S. Application. The references are filed herewith in an Information Disclosure Statement. Applicant respectfully submits that, for the same reasons as stated above with respect to the cited Rogers patent, these additional references do not anticipate Applicant's claimed invention, nor is Applicant's claimed invention obvious in light of these references.

1. Lloyd (U.S. Patent No. 2,460,389) is a grain milling process which is distinguishable from Applicant's claimed invention. Specifically, the Degerminator operation in Lloyd consists of two distinct steps: (1) a breaking step, and (2) a sifting step. *See* Lloyd column 3, lines 45-54. In Lloyd's process no finished product is removed directly following the sifting step within the Degerminator operation. Rather, the stream goes through at least one additional sifter (the "Hominy Reel") before any product is removed to a finished product holding vessel. Therefore, this reference is distinguishable from Applicant's Claims 5 and 11 because finished product is not removed from each separation step. Again, this is significant in reducing the volume of downstream material that must be processed by the system thereby increasing through-put and efficiency as reflected by the claimed invention.

2. Bassetti (EP 0,418,801) is a grain milling process which is distinguishable from Applicant's claimed invention because Bassetti discloses several separation steps from which no finished product is removed. For example, pneumatic separator 18 as shown in Figure 1 is a separation step as shown by the single product stream entering the step and the three streams leaving the step. Column

4, line 49 of Bassetti's specification describes this pneumatic separator 18. As seen in Figure 1, no finished product is removed directly after pneumatic separator 18. Furthermore, Plansifter 39 is also a separation step in which there is no stream that goes directly to finished product. Therefore, this reference is distinguishable from Applicant's claimed invention.

3. Satake (EP 0,958,863) is a flour milling process. As shown in Figures 2 and 3, reference numeral "3" employs a separation step in which no finished product is removed from the mill stream. Device 3 is a separation as demonstrated by the entry of one product stream into the step, and the two product streams departing the step. As described in the Satake specification in paragraphs 30-32, device 3 is not only a separation step, but it is also a breaking step because "the epidermis at the surface of the wheat grain is removed by abrasion." After the stream leaves device 3, Satake employs additional separation and breaking steps before any finished product is finally removed. Therefore, this reference is distinguishable from Applicant's claimed invention.

4. Peter (AT 380,183) is a process that has several separation steps in which nothing is removed as finished product. As seen in Peter's only Figure, device 25 and 26 are clearly a separation steps because one stream goes in and multiple streams come out, none of which are a finished product stream. Therefore, this reference is distinguishable from Applicant's claimed invention.

5. Szauter (DE 37,10,602) is a process that has several separation steps in which nothing is removed as finished product. Therefore, this reference is distinguishable from Applicant's claimed invention.

6. Curran (U.S. Patent No. 5,114,079) is a wheat milling process that discloses three breaking steps in a row (R1, R2, and R3) before there is any separation or removal of finished product. (See Curran Specification Col. 3-4). Curran does not disclose a separation step which occurs after each breaking step from which finished product is removed. Therefore, this reference is distinguishable from Applicant's claimed invention.

It is respectfully submitted that this response places Applicant's application in condition for allowance, and therefore further and favorable action on this application is requested.

Respectfully submitted,  
JOHN GRIEBAT

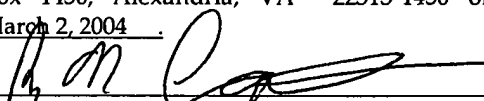
By: 

Ryan N. Carter  
Attorney for Applicant

Ryan N. Carter  
Shuttleworth & Ingersoll, PLC  
115 3<sup>rd</sup> Street SE, Suite 500  
P.O. Box 2107  
Cedar Rapids, IA 52406  
Phone: (319) 365-9461  
Fax: (319) 365-8443  
Email: [rnc@shuttleworthlaw.com](mailto:rnc@shuttleworthlaw.com)  
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Ryan N. Carter, Registered Representative